IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/12/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.5928 OF 1998
AND
W.M.P.NO.18102 OF 1999

Muthukrishnan .. Petitioner

-Vs-

1. The State of Tamil Nadu
through the Secretary
Housing and Urban Development
Department, Fort St. George,
Madras 9.

2. The Collector,
Tirunelveli District,
Tirunelveli.

3. The Special Tahsildar
Land Acquisition (LA)
Neighburhood Scheme,
Tirunelveli.

4. The Chairman,
Housing Board, Nandanam,
Madras. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.D. Rajagopal

For Respondents 1-3 : Mrs.N.G. Kalaiselvi,
Special Govt. Pleader

For Respondent-4 : Mr.D. Veerasekaran

:O R D E R

Heard the learned counsels appearing for the parties.

2. In this writ petition, the petitioner has prayed for a declaration that the land acquisition proceedings initiated under G.O.Ms.No.301 , H & UD Dept. dated 4.3.91 has lapsed as the award was not passed in time in respect of the lands belonging to the petitioner in S.No.36/1 in Palayamkottai in Tirunelveli District.

3. The main contention of the petitioner is that the award has not been passed within a period of two years as contemplated under Section 11-A of the Land Acquisition Act (hereinafter referred to as the Act). In making the aforesaid submission, the petitioner has referred to notice dated 13.5.1996, which is to the following effect :

 An extent of 1.73.0 Hectares of land in S.No.36/1 in V.M. Chatram Village, Block IV, was acquired and award was already passed in this office award No.3/92-93 dt. 12.3.93 (Roc.No.A.34/88 dt.12.3.93). You have filed W.P.No.2977/93 in the High Court, Madras and the High Court, Madras in their order dated 10.1.96 has dismissed the W.P. filed by you. Now the W.P. has been dismissed, and stay vacated, the amount of compensation has to be finalised. You are therefore requested to produce the documentary evidence to prove the entire land in S.No.3 6/1 of V.M. Chatram Village is only belongs to you. You are requested to appear in this office on 20.5.96 at 11,00 A.M. before me without fail with all the documents available with you. . . .

By referring to the expression Now the W.P. has been dismissed, and stay vacated, the amount of compensation has to be finalised. . . . learned counsel for the petitioner has submitted that the above portion indicates that by the date of such notice, the award had not been passed. To verify this aspect, the learned counsel representing the State was called upon

to produce records. The records show that award had been passed on 12.3.1993. As a matter of fact, even in the notice dated 13.5.1996, there is a reference to the award dated 12.3.1 993. The expression contained in the very same notice to the effect . . . the amount of compensation has to be finalised. is an inartistic expression, which has given rise to the present submission of the learned counsel for the petitioner. On perusal of the records, I am not able to accept this submission that the award was not passed within 2 years. Therefore, the prayer of the petitioner that the land acquisition proceedings should be quashed on account of non-compliance of Section 11-A cannot be sustained.

4. Learned counsel for the petitioner has also submitted that the petitioner has been repeatedly writing to the authorities to furnish a copy of the award to make a formal application under Section 18 of the Act. As a matter of fact such representation was considered as an application for making reference and was rejected by the authorities on the ground that such application was not filed within the stipulated period. This aspect is being challenged by the counsel for the petitioner.

5. The provisions contained in Section 18 of the Act are as follows :-

18. Reference to Court.- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. (2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made, -

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire.

6. Learned counsel for the petitioner has submitted that in the present case award had not been made in the presence of the petitioner nor notice had been issued prior to making of the award. He has therefore

submitted that Section 18(2) proviso (a) would not be applicable and Section 18(2)proviso (b) would be applicable. In this context, he has further submitted that mere knowledge of the petitioner that some award has been passed is not suffici ent and the respondent was required to furnish particulars of the award or serve a copy of the award.

7. Learned counsel for the petitioner has referred to the decision reported in A.I.R. 1961 SC 1500 (RAJA HARISH CHANDRA RAJ SINGH v. THE DEPUTY LAND ACQUISITION OFFICER AND ANOTHER) and A.I.R. 1963 SC 1604 (STATE OF PUNJAB v. MST. QAISAR JEHAN BEGUM AND ANOTHER). In the decision reported in AIR 1961 SC 1500, the award was actually made, signed and filed in the office of the concerned Land Acquisition Officer on 25.3.1951. No notice of this award had been given to the appellant as required under Section 12(2). The appellant received information about making of the award on or before 13.1.1953. The appellant then filed application on 24.2.1953 under Section 18 requiring that the matter should be referred for determination of the Court as compensation determined in the proceedings was inadequate. Such application was rejected on the ground that it had not been filed within the stipulated period. Ultimately in the Division Bench of the High Court it was held that the application was not filed within time. In appeal before the Supreme Court, it was observed :

 4. . . . The proviso to Section 18 deals with the question of limitation. It prescribes that every such application shall be made (a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector s award; (b) in other cases within six weeks of the receipt of the notice from the Collector under Section 12(2), or within six months from the date of the Collector s award which ever shall first expire. The appellant s case falls under the latter part of clause(b) of the proviso. It has been held by the Allahabad High Court that since the application made by the appellant before respondent 1 was made beyond six months from the date of the award in question it was beyond time. The view taken by the High Court proceeds on the literal construction of the relevant clause. As we have already seen the award was signed and delivered in his office by respondent 1 on March 25, 1951, and the application by the appellant was made under Section 18 on February 24, 1953. It has been held that the effect of the relevant clause is that the application made by the appellant is plainly beyond the six months permitted by the said clause an so respondent No.1 was right in rejecting it as barred by time. The question which arises for our decision is whether this literal and mechanical way of construing the relevant clause is justified in law. It is obvious that the effect of this construction is that if a person does not know about the making of the award and is himself not to blame for not knowing about the award his right to make an application under Section 18 may in many cases be rendered ineffective. If the effect of the relevant provision unambiguously is as held by the High Court the unfortunate consequence which may flow from it may not have a material or a decisive bearing. If, on the other hand, it is possible reasonably to construe the said provision so as to avoid such a consequence it would be legitimate for the Court to do so. We

must therefore enquire whether the relevant provision is capable of the construction for which the appellant contends, and that naturally raises the question as to what is the meaning of the expression the day of the Collector's award. (Emphasis added)

It was further observed :

" 5. Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

(6) There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the right of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award of signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way. (Emphasis added)

(7) In this connection it is material to recall the fact that under Section 12(2) it is obligatory on the Collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The Legislature recognised that the making of the award under Section 11 followed by its filing under Section 1 2(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary and so by the use of the mandatory words an obligation is placed on the Collector to communicate the award immediately to the person concerned. It is significant that the section requires the Collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to Section 18. It is because communication of the order is regarded by the Legislature as necessary that Section 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under Section 12(2) should directly tend to make ineffective the right of the party to make an application under Section 18, and this result could not possibly have been intended by the Legislature."

Ultimately after referring to several decisions of various High Courts and different statutes, it was further observed :-

" . . . These decisions show that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. Therefore, we are satisfied that the High Court of Allahabad was in error in coming to the conclusion that the application made by the appellant in the present proceedings was barred under the proviso to Section 18 of the Act."

8. The question again cropped up in the late decision reported in 1 963 SC 1604 (STATE OF PUNJAB v. MST. QAISAR JEHAN BEGUM AND ANOTHER), wherein it was observed :-

" . . . (5) As to the second part of cl.(b) of the proviso, the true scope and effect thereof was considered by this court in Harish Chandra's case, 1962-1 SCR 676 : (AIR 1961 SC 1500)(supra). It was there observed that a literal and mechanical construction of the words " six months from the date of the Collector's award" occurring in the second part of cl.(b) of the proviso would not be appropriate and "the knowledge of the party affected by

the award, either actual or constructive, being an essential requirement of fair play and natural justice, the expression . . . used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. . . . Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award. Looked at from that point of view, we do not think that it can be inferred from the petition dated December 24, 1954 that the respondents had knowledge of the award. ...

9. In view of the aforesaid two clear decisions directly on the point, the learned counsel for the petitioner has submitted that in the interest of justice, the respondents should be given a direction to furnish a copy of the award to the petitioner to enable him to file an application under Section 18 for making a reference.

10. As against this submission, the learned counsel appearing for the State has relied upon a decision reported in 1995(3)SCC 330 (STATE OF PUNJAB AND ANOTHER) which has been followed in 1996(II)SCC 213 and contended that it is not necessary to furnish a copy of the award and since the petitioner had knowledge that award had been passed, he cannot be permitted to file application under Section 18 after lapse of the period as contemplated under Section 18 of the Act. It is no doubt true that the decisions cited by the learned counsel for the State support his contention. However, on perusal of the aforesaid two decisions, it is found that there is no reference to any of the earlier decisions already discussed. It is noticed that 1961 SC 1500 was rendered by a Bench consisting of two judges and the decision reported in 1963 SC 1604 by a Bench consisting of three judges. The two subsequent decisions cited by the learned counsel for the respondent were rendered by Benches consisting of two judges. In other words, the decision reported in 1963 SC 1604 is of a larger Bench.

11. Law is well-settled that earlier decision of the Supreme Court of the same strength or of higher strength is binding even on the Supreme Court. The subsequent decisions of the Supreme Court which have been rendered without referring to the earlier two decisions, one of which is by a larger bench, cannot be preferred. In such view of the mater, I am of the opinion that the contention raised by the counsel for the State Government cannot be accepted.

12. Even though the petitioner had made application to furnish copy of award to make a formal application under Section 18 of the Act and the respondent No.3 has purported to reject such application treating it as an application for reference, in the facts and circumstances of the case and in the interest of justice, I direct that the respondents should furnish a copy of the award within a period of three weeks from the date of communication of the order and it would be open to the petitioner to file a formal application under Section 18 for making a reference claiming higher

compensation. If any such application is filed within six weeks from the date of receipt of such award, such application should be referred as contemplated under Section 18 of the Act.

13. Learned counsel for the respondents has also raised a technical question that since there is no prayer for making a reference, no such direction should be given. It is well known that the Rules of procedure are hand maids of justice. The High Court while deciding a matter under Article 226 acts as a Court of equity and and good conscience it has got inherent power to pass necessary orders in the interest of justice without being bogged down by the technicalities of procedural law.

13. With the above direction, the writ petition is disposed of. No costs. Consequently, W.M.P.NO.18102 is closed.

Index : Yes

Internet : Yes

dpk

To

1. The State of Tamil Nadu through the Secretary Housing and Urban Development Department, Fort St. George, Madras 9.

2. The Collector, Tirunelveli District, Tirunelveli.

3. The Special Tahsildar Land Acquisition (LA) Neighburhood Scheme,

Tirunelveli.

4. The Chairman, Housing Board, Nandanam, Madras.